

Court of Appeals, State of Michigan

ORDER

People of MI v John Jones

Docket No. 287989

LC No. 08-008168

Kirsten Frank Kelly
Presiding Judge

Brian K. Zahra

Karen Fort Hood
Judges

The Court orders that the order of October 3, 2008, is VACATED to the extent that it held the application in abeyance.

In lieu of granting the application, the Court orders, pursuant to MCR 7.205(D)(2), that the August 20, 2008, order of the Wayne Circuit Court granting defendant's motion to quash Counts 2-4 of the Amended Information hereby is REVERSED. Evidence at the preliminary examination reflected the requisite elements for first-degree criminal sexual conduct, MCL 750.520b. The complainant testified that defendant touched "in" and "on" her vagina and that defendant put his penis "in" her vagina. *People v Hammons*, 210 Mich App 554; 534 NW2d 183 (1995) (ruling that sexual penetration includes any intrusion, however slight, of any part of a person's body into the genital opening of another person's body). Thus, evidence at the preliminary examination demonstrated probable cause that a crime was committed and that defendant committed the crime; the evidence was sufficient to support the charges. Counts 2-4 are REINSTATED.

Further, the Court orders that the September 24, 2008, order regarding the admission of other acts evidence is REVERSED. See MCL 768.27a. Also, the notice in this case was sufficient under MRE 404(b)(2). It provided the general nature of the evidence at issue: the frequent and consistent abuse of the complainant, along with any steps defendant took to coerce the complainant to remain silent about the ongoing abuse. The notice indicated that the evidence was offered to show proof of intent and motive and to dispel any claim of mistake, all permissible reasons for admission pursuant to MRE 404(b). *People v VanderVliet*, 444 Mich 52; 508 NW2d 114 (1993). The case is REMANDED for proceedings consistent with this order.

This order is to have immediate effect, MCR 7.215(F)(2). The Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

OCT 14 2008

Date

Sandra Schultz Mengel
Chief Clerk